

## MEDICINE BOARD[653]

### Notice of Intended Action

#### **Proposing rule making related to waivers and providing an opportunity for public comment**

The Board of Medicine hereby proposes to amend Chapter 3, “Waivers and Variances,” Chapter 8, “Fees,” Chapter 9, “Permanent and Administrative Medicine Physician Licensure,” Chapter 10, “Resident, Special and Temporary Physician Licensure,” Chapter 11, “Continuing Education and Training Requirements,” Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Chapter 17, “Licensure of Acupuncturists,” Chapter 19, “Prescribing Psychologists,” Chapter 20, “Licensure of Genetic Counselors,” Chapter 21, “Physician Supervision of a Physician Assistant,” and Chapter 23, “Grounds for Discipline,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 272C.3.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

#### *Purpose and Summary*

2020 Iowa Acts, House File 2389, amends Iowa Code chapter 17A to remove the term “variance” and requires that agencies’ rules about waiver procedures refer only to waivers. This proposed rule making reflects the changes required by 2020 Iowa Acts, House File 2389, by removing the word “variance” from the Board of Medicine’s rules.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

#### *Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on January 21, 2021. Comments should be directed to:

Joseph Fraioli  
Iowa Board of Medicine  
400 SW Eighth Street, Suite C  
Des Moines, Iowa 50309  
Phone: 515.281.3614  
Email: [joseph.fraioli@iowa.gov](mailto:joseph.fraioli@iowa.gov)

### Public Hearing

A public hearing at which persons may present their views orally or in writing will be held via Google Meet at the link below. Participants may also call in via phone at the following phone number: (US) +1 971.801.0248. When prompted, enter PIN: 443 922 280#. Please mute your phones or microphones upon entering the meeting.

January 20, 2021  
1 to 2 p.m.

[meet.google.com/xwz-winy-fyw](https://meet.google.com/xwz-winy-fyw)  
Google Meet Location

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

### Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **653—Chapter 3**, title, as follows:

#### WAIVERS AND VARIANCES

ITEM 2. Amend rule 653—3.1(17A,147,148) as follows:

**653—3.1(17A,147,148) Definition.** For purposes of this chapter, a “waiver ~~or variance~~” means an action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 653—3.4(17A,147,148), introductory paragraph, as follows:

**653—3.4(17A,147,148) Criteria for waiver ~~or variance~~.** In response to a petition completed pursuant to rule ~~3.6(17A,147,148)~~ 653—3.6(17A,147,148), the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

ITEM 4. Amend rule 653—3.17(17A,147,148) as follows:

**653—3.17(17A,147,148) Sample petition for waiver.** A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

#### BEFORE THE BOARD OF MEDICINE

Petition by (name of petitioner)  
for the waiver/~~variance~~ of (insert rule citation)  
relating to (insert the subject matter).

}

PETITION FOR  
WAIVER/~~VARIANCE~~

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver ~~or variance~~). Also, the name, address, and telephone number of the petitioner's legal representative,

if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. to 7. No change.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the grant of the waiver ~~or variance~~.

9. and 10. No change.

I hereby attest to the accuracy and truthfulness of the above information.

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Petitioner's signature

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Date

ITEM 5. Amend rule 653—8.11(17A,147,148,272C) as follows:

**653—8.11(17A,147,148,272C) Waiver ~~or variance~~ prohibited.** Licensure and examination fees in this chapter are not subject to waiver ~~or variance~~ pursuant to 653—Chapter 3 or any other provision of law.

ITEM 6. Amend rule 653—9.18(17A,147,148,272C) as follows:

**653—9.18(17A,147,148,272C) Waiver ~~or variance~~ requests.** Waiver ~~or variance~~ requests shall be submitted in conformance with 653—Chapter 3.

ITEM 7. Amend rule 653—10.6(17A,147,148,272C) as follows:

**653—10.6(17A,147,148,272C) Waiver ~~or variance~~ requests.** Waiver ~~or variance~~ requests shall be submitted in conformance with 653—Chapter 3.

ITEM 8. Amend rule 653—11.6(17A,147,148E,272C) as follows:

**653—11.6(17A,147,148E,272C) Waiver ~~or variance~~ requests.** Waiver ~~or variance~~ requests shall be submitted in conformance with 653—Chapter 3.

ITEM 9. Amend rule 653—13.21(17A,147,148,272C) as follows:

**653—13.21(17A,147,148,272C) Waiver ~~or variance~~ prohibited.** Rules in this chapter are not subject to waiver ~~or variance~~ pursuant to 653—Chapter 3 or any other provision of law.

ITEM 10. Amend subrule 17.4(2) as follows:

**17.4(2) Waiver ~~or variance~~ prohibited.** Provisions of this rule are not subject to waiver ~~or variance~~ pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 11. Amend subrule 17.5(13) as follows:

**17.5(13) Waiver ~~or variance~~ prohibited.** Provisions of this rule are not subject to waiver ~~or variance~~ pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 12. Amend rule 653—17.11(147,148E,272C), introductory paragraph, as follows:

**653—17.11(147,148E,272C) General disciplinary provisions.** The board is authorized to take disciplinary action against any licensee who violates the provisions set forth in state law and administrative rules pertaining to the safe and healthful practice of acupuncture. This rule is not subject to waiver ~~or variance~~ pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 13. Amend rule 653—17.30(147,148E,272C) as follows:

**653—17.30(147,148E,272C) Waiver ~~or variance~~ prohibited.** Fees in this chapter are not subject to waiver ~~or variance~~ pursuant to 653—Chapter 3 or any other provision of law.

ITEM 14. Amend **653—Chapter 17**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 148E and sections 17A.10 to 17A.20, 147.55, 272C.3 to 272C.6, 272C.8 and 272C.9 and Iowa Code chapter 148E as amended by 2000 Iowa Acts, chapter 1053.

ITEM 15. Amend rule 653—19.8(148,154B) as follows:

**653—19.8(148,154B) Joint waiver or variance—joint rule.** Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

ITEM 16. Amend subrule 20.8(12) as follows:

**20.8(12) Waiver or variance prohibited.** Provisions of this rule are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

ITEM 17. Amend rule 653—20.20(147,148H,272C), introductory paragraph, as follows:

**653—20.20(147,148H,272C) Grounds for discipline of genetic counselors.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148H, or 272C or the rules promulgated thereunder. These grounds for discipline apply to genetic counselors. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 18. Amend rule 653—20.25(147,148H,272C) as follows:

**653—20.25(147,148H,272C) Waiver or variance prohibited.** Fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

ITEM 19. Amend rule 653—21.8(17A,147,148,272C) as follows:

**653—21.8(17A,147,148,272C) Waiver or variance requests.** Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

ITEM 20. Amend rule 653—23.1(272C), introductory paragraph, as follows:

**653—23.1(272C) Grounds for discipline.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, or 272C or 2008 Iowa Acts, Senate File 2428, division H, or 272D or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses: